

### **III. REMARKS**

Briefly, in response to the Office Action mailed on March 2, 2004, independent claims 1, 6 and 10 have been amended to overcome rejection in the Office Action. Claims 12 and 13 have been amended for clarification purposes. New claims 20-22 recite a tool carrier with a removable tool holder, and replace claims 16, 18 and 19 thereby eliminating claims directed specifically to the tool holder. Claim 17 was previously cancelled. Claims 1, 2, 3-15 and 20-22 remain in the application.

#### ***Response to Amendment***

The amendment filed on 1/26/04 was objected to as introducing new matter.

***Response:*** Applicant did not intend to introduce new matter, and realizes that such interpretation was caused by improper wording choice, specifically in relation to use of "outer and inner side edges" in describing the pockets. Applicant apologizes for this choice, and has cancelled the "new matter" by canceling claim 16.

#### ***Claim Rejection - 35 USC § 112***

Claims 16 and 18-19 were rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth above, and under the second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

***Response:*** Applicant has, in this amendment, cancelled claims 16 and 18-19.

#### ***Claim Rejection - 35 USC § 102***

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by Armstrong. Applicant respectfully disagrees with the examiner's suggestion that the front panel of the Armstrong carrier is "planar". However, in view of the further basis for rejection of claim 1, and the amendment to claim 1 herein, Applicant does not believe the point needs further attention.

Claims 1-2 were rejected under 35 U.S.C. § 102(b) as being anticipated by Gaona et al (Des. 380,276). .

***Response:*** See discussion below concerning claim 3.

***Claim Rejection - 35 USC § 103***

Claims 3, 6-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Armstrong in view of Reynolds.

Claims 3, 6-7 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over Gaona et al in view of Reynolds.

***Response:*** In relation to both of these rejections, Applicant respectfully disagrees with the suggestion that it would have been obvious in view of Reynolds to provide an elastic member between the panels of Armstrong or Gaona et al. as recited in claims 3, 6-7. Applicant appreciates that an elastic member is, has and long will been used to connect two other members together, for such is its basic purpose. Elastic not connected or fixed to two members cannot realize its natural potential. However, an arrangement as suggested by the examiner in relation to Armstrong or Gaona et al is simply not supported or suggested anywhere in the art relevant to tool holders for step ladders.

Nevertheless, the elastic limitations in claim 3 were used in amending claim 1, together with a clarifying limitation to read: "elastic members interconnecting adjacent panels for resilient expansion and contraction therebetween, the elastic members extending across said interconnected edge portions of adjacent panels". Claim 6 has been amended with similar limitations. Providing interconnected edges of panels and elastic members across the interconnected edges of the panels, is the preferred embodiment disclosed in the application and is not suggested in the prior art.

Claims 4-5 and 10-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Armstrong in view of Markson.

Claims 4-5 and 10-13 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over Gaona et al in view of Markson.

***Response:*** Applicant respectfully disagrees with the suggestion that it would have been obvious in view of Markson to provide an internal frame in the carrier of Armstrong or Gaona et al. as recited in claims 4-5 and 10-13. Applicant further disagrees with the justification for this proposed combination, the statement that reads "Without the frame members, heavier tools can still compromise the pockets while the bottom of the device is positioned on a horizontal

surface." There is no justification in Armstrong or Gaona et al. for the examiner to make such a claim, and without which there is not support for the combination suggested by the examiner.

Moreover, Markson teaches a knock-down frame to support a fabric cover, inside which product is located, and which includes anchor plates (33) that extend inwardly from the base of the frame to anchor the frame and cover in position on the ground (see e.g., Col. 3, lines 40-43, col. 4, lines 6-15). Markson does not teach a frame for connection to a carrier that can be raised and lowered from above, or that can be carried on the top of a step ladder. Instead, Markson teaches a but rather a frame that supports a top to be opened and closed for access to the product inside. Utilizing the teachings of Markson with Armstrong or Gaona et al. would not result in the tool carrier as defined in claims 4-5 and 10-13.

Nevertheless, claim 10 has been amended to clarify the differences in the present invention. Specifically, claim 10 has been amended to clarify that -- the lower perimeter of the skirt and frame structure are open in the interior when viewed from below for sliding snugly onto the top of a step ladder. This arrangement is not contemplated, or even possible in view of the teachings of Markson. Therefore Applicant believes that claim 10, as amended, and claims 11-13 which depend from claim 10, are allowable over the prior art of record.

Claim 4 depends from claim 1, and claim 5 depends from claim 4. Applicant believes that claim 1, as amended, is allowable. Therefore, Applicant believes that claims 4 and 5 are also allowable.

Claims 8-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the references applied with respect to claim 6 (including Armstrong or Gaona et al. in view of Armstrong), and in further view of Markson.

**Response:** Claims 8-9 depend from claim 6, and for the reasons discussed above in relation to claim 6, are now allowable.

Claims 16, 18-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Briault (Des. 365,232).

Claims 16, 18-19 were further rejected under 35 U.S.C. § 103(a) as being unpatentable over Briault (Des. 365,232) in view of Florian or Spykerman.

**Response:** Claims 16, 18-19 are cancelled from the application.

***Allowable Subject Matter***

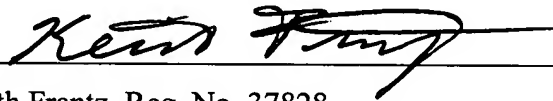
Claims 14-15 were objected to as being dependent upon a rejected base claim, but indicted as allowable if rewritten in independent form including all limitations of the base claim and any intervening claims.

**Response:** Applicant thanks the examiner for indication of allowability of claims 14-15.

***Summary***

In view of the foregoing, Applicant respectfully submits that the claims pending in the application are allowable, and allowance thereof is respectfully requested.

Respectfully submitted,



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